natures with the bank specimen signature in Exhibit P.13 (though he made comparison with Exhibit D.29 – thirty genuine cheques drawn by plaintiff firm over a period of time) would tend to render his evidence on signatures less reliable than Mr. Phan, who made comparison not only with the specimen signature card but also with 10 genuine cheques previously drawn by plaintiff firm, and sample signature and handwriting of Mr. Sim taken by the police. But neither the original of authorisation letter Exhibit P.9 nor the specimen signature card Exhibit P.13 were sent to Mr. Davies in England for comparison and examination. The first time he saw them was in this court.

In this case, it is not in dispute that the five disputed cheques were presented for payment at the head office of defendant bank on the various dates in July 1975 as contained in Exhibit P.1 to P.5, and debited against plaintiff's current account No. 2159 which had been actively operating since July 19, 1974 until it was finally closed on August 14, 1975 as a result of the present dispute. (See AB.20 and AB.36 in the first Agreed Bundle). As can be seen from the statement of accounts, it was not a dormant bank account. Being a shipping agent, the plaintiff firm's account was active and the credit balance even touched $1,000,000/– in May 1975. In my view, it is stretching one's imagination too far to infer that such a bank account was established for the purpose of cheating the defendant, merely because Mr. Sim did not check the bank balance from the cheque book's counterfoils in the usual pattern in July 1975. It is true that Mr. Sim was sued in the High Court at Kuala Lumpur by Wah Siong Shipping Company regarding payment of commission to a person in Singapore, but that was after he had left Wah Siong – his former employer and joined the plaintiff firm. Further, he was sued only for the sum of $17,000/– and the claim was dismissed. There is also no evidence that Mr. Sim or the plaintiff firm was in financial difficulties in July 1975 when the five disputed cheques were forged and presented for payment. Under these circumstances and based on the expert evidence of Mr. Phan, I am satisfied that both the signature and handwriting on the disputed cheques are not that of Mr. Sim nor is he responsible for forging the same. In the absence of evidence that Mr. Sim knew Tong Bit Kin to whom the relevant cheque book was handed by the defendant bank, or that he was in any way connected with Pun Shyh Yun or Syarikat Pun, to whom the forged cheques were made payable, or that either he or someone he knew was the person who presented the cheques for payment, apart from the question of failure to plead self-forgery, I reject the defendant's contention that Mr. Sim had anything to do with the forgeries of the authority letter Exhibit P.9, and the five disputed cheques. On balance of probabilities in the evidence, the plaintiff's claim must succeed. In his submission, learned counsel for the defendant complained that the plaintiff has not pleaded negligence and that to put the defendant bank on trial is a red-herring. In the first place, I agree that on the pleading the plaintiff's cause of action is not based on negligence although the pre-writ correspondence and the pre-trial affidavits indicate that negligence on the part of the bank was being considered and expressly mentioned. This court is, however, bound to decide the present dispute on the pleadings. (See *Haji Mohamed Dom v. Sakiman*[3]). The cause of action is for money due and owing from the defendant to the plaintiff, as a result of wrongful debiting of plaintiff's account by the defendant bank. To determine the first issue, it is in fact the defendant who called officers from the bank to refute the plaintiff's allegations that the plaintiff firm never bought or received the relevant cheque book which contained the five disputed cheques. As such, it is not correct for the defendant to complain that the whole bank has been unnecessarily put on trial.

Since I am satisfied beyond reasonable doubt that the five disputed cheques and the authorisation letter are forgeries, I do not think I need go through in detail the alternative defence raised in the Statement of Defence. In any case, they have not been seriously pursued by defendant counsel either in evidence or in his submission. Suffice for me to say that there is no evidence to support that the forgeries were perpetrated as a result of negligence on the part of the plaintiff firm or its servants or agents; nor is there evidence that any of them was guilty of contributory negligence. As regards the plea under section 24 of the Bills of Exchange Act 1949, I do not think that provision can help the defendant in the circumstances of the present case. There is no evidence of negligence or any other conduct on the part of the plaintiff firm or its servants or agents to warrant a ruling that the plaintiff is estopped or precluded from setting up a forgery or want of authority under section 24. The five forged cheques are wholly inoperative, and the defendant bank is not entitled to debit the sum claimed from the plaintiff's account.

For the above reasons, I give judgment for the plaintiff in terms as prayed in paragraph (i), (ii) and (iii) of Statement of Claim, except that in prayer (ii), the interest should be at 10.5% instead of 12%, which is the interest rate for overdraft according to the evidence of Mr. Koo Mui Sang (D.W.4).

Claim allowed.

Solicitors: *Syarikat K.S. Tan; Allen & Gledhill*

LETCHEMY ARUMUGAN v. N. ANNAMALAY

[O.C.J. (Wong Kim Fatt J.C.)
December 8 & 9, 1981 and April 2, 1982]
[Seremban – Civil Suit No. 251 of 1978]

Contract – Sale of land – Fraudulent misrepresentation – Rescission – Claim for damages and interest – Defendant counter-claiming for specific performance and damages – Contracts Act 1950 (Revised 1974), ss. 16 & 17 – Specific Relief Act, 1950 (Revised 1974), ss. 27 & 37 – Evidence Act, 1950, s. 111 – National Land Code, 417.

In this action the plaintiff, an illiterate Indian woman rubber tapper, claimed against the defendant a declaration and rescission of an agreement of sale dated January 7, 1977 and other documents executed by her, on the ground of false or fraudulent misrepresentation on the defendant's part relating to her land Lot 736, District of Port Dickson. She also claimed damages and interest. The defendant, a housing developer, denied the claim and counter-claimed for specific performance and damages. The parties listed six issues for determination by the court.

The plaintiff sought to prove that the defendant with the aid of his advocate and solicitor had taken unfair advantage of her ignorance. The defendant had fraudulently misrepresented to her that she had to sign some documents, which were in the English language, for the loan she took from him and for the discharge of charge. She executed these documents not knowing she was in fact signing a sale agreement relating to her land and three other agreements for the purchase of 3 sub-lots in her own land. The defendant, however, contended that the documents in question were properly witnessed by his solicitor who had explained them to the plaintiff.

Held, allowing the claim and dismissing the counterclaim: (1) the plaintiff had proved fraudulent misrepresentation, the truth of which the defendant did not believe in. The six issues must be answered in favour of the plaintiff;

(2) the agreement of January 7, 1977 relating to the sale of the land and the 3 agreements to the 3 sub-lots must be rescinded;

(3) the plaintiff is entitled to damages for her losses arising out of the fraudulent misrepresentation by the defendant;

(4) the defendant must not benefit from his fraudulent misrepresentation, and specific performance and damages claimed by him must be refused.

Observations on the duty of an advocate and solicitor in a transaction.

Cases referred to:–

(1) *Lloyds Bank* v. *Bundy* [1974] 3 All E.R. 757, 765.

(2) *Re Craig* [1970] 2 All E.R. 390, 393.

(3) *Doyle* v. *Olby (Ironmongers) Ltd.* [1969] 2 Q.B. 158, C.A.; [1969] 2 All E.R. 119.

CIVIL SUIT.

A.K.J. D'Cruz for the plaintiff.

John Fernandez for the defendant.

Cur. Adv. Vult.

Wong Kim Fatt J.C.: In this action, the plaintiff in her statement of claim claims against the defendant a declaration that any document signed by her purported to be a sale agreement in favour of the defendant to be void and not binding on her; rescission and return of purported sale agreement dated January 7, 1977 and other documents and the issue document of title E.M.R. 1406; damages and other incidental reliefs on the ground of fraudulent misrepresentation on the part of the defendant. The subject matter of the dispute is a piece of land Lot 736, measuring 5 acres 1 rood 19 poles, held under E.M.R. 1406, Mukim of Linggi, District of Port Dickson, State of Negeri Sembilan ("the land"), and registered in the name of the plaintiff as proprietor.

At the commencement of the trial, the parties had agreed in writing that there were six issues for decision as follows:

"(1) Whether the document executed by the plaintiff on January 7, 1977, purportedly a sale and purchase agreement in respect of land held under E.M.R. 1406 for Lot 736, Mukim of Linggi, Port Dickson, was executed freely and voluntarily by the plaintiff.

(2) Whether the defendant induced the plaintiff to execute the document referred to in (1) herein as a result of misrepresentation by the defendant to the plaintiff as alleged in paragraph 6 of the statement of claim.

(3) Whether the said document should be declared null and void and consequently the alleged sale and purchase agreement should be rescinded.

(4) Whether the plaintiff gave to one Subramaniam s/o Maruthan on December 25, 1976 an option for the sale of land referred to in paragraph one (1) of the statement of claim.

(5) Whether the plaintiff received the sum of $14,100 from the defendant as referred to in paragraph 5 of the statement of claim.

(6) Whether the defendant is entitled to specific performance of the alleged sale of the land in question by the plaintiff."

The plaintiff at the trial gave evidence on her own behalf in Tamil. She said that she had known the defendant since he was 14 or 15 years old. The issue document of title to the land was in a pawnshop because its proprietor, whom she referred to as Soo Kee, lent her money. It transpired that she had charged the land to him to secure a loan of which a sum of $6,500 was still owing at the material time. She seemed to express the hope that if someone paid this sum of money, she would get the title back and sell the land. After meeting the plaintiff in her house, the defendant returned two days later with a cheque for her to pay Soo Kee to discharge the charge. She did not know how to cash the cheque. On the advice of the defendant, she later met him at the Seremban old market. She went to his office, where he told her she must sign some documents since he was paying the money to Soo Kee; otherwise the defendant could not change the title to her sole name, meaning discharge of the charge. She said she signed some documents by her thumb print, thinking that they were for the loan she took from the defendant and for discharge of the charge. She said she did not enter into an agreement on January 7, 1977 to sell the land to the defendant for $32,000. She did not have the intention to sell the land, and neither had she given the option to anyone to sell the land. She said on that day she received from the defendant $6,500, not $14,100. She paid the sum of $6,500 to Soo Kee. As proof, she produced a receipt dated January 7, 1977 for $25 (Exhibit P1) which she paid to the chargee's solicitors as legal costs for discharge of the charge. The plaintiff then gave the document of title to a person sent by the defendant, who told her the title would be returned to her as soon as the discharge had been registered. As events turned out, the plaintiff had not been given the document of title. She made a police report (Exhibit P4) at Linggi on May 3, 1978 soon after discovering that the rubber trees on the land were being felled by the defendant.

On cross-examination she said she did not report the fraud to the police because she had instructed her solicitors to handle the matter after she discovered the trees were being felled. On being questioned as to why she had taken one year and four months to see her solicitors, she replied that she trusted the defendant, but when she saw the trees being felled, she lost confidence in him. She did not complain to the Bar Council because she did not know of its existence.

The defendant called as his first and most important witness one Mr. Coelho, an advocate and solicitor who is not now practising under his own name. In his examination-in-chief, he stated that he met the plaintiff in the defendant's office. He testified that the agreement dated January 7, 1977 (Exhibit D5) was executed by the plaintiff in his presence. The sum of $14,100 was paid by the defendant partly in cash and partly by the sale of three pieces of proposed sub-lots in the same piece of land owned by the plaintiff, who he said executed the three agreements relating to the three sub-lots (Exhibits D9, D10 and D12)

simultaneously with the execution of the sale agreement of January 7, 1977 ("the agreement"). Coelho stated in evidence that present at the signing were the plaintiff, her daughter, her son-in-law, the defendant, and some of his employees. He also stated that the statutory form of transfer (Exhibit D7) and adjudication form (Exhibit D8) were also executed by the plaintiff that day in his presence and that he explained the contents of the documents to the plaintiff. He was satisfied that the parties understood the nature of the documents.

More material facts were revealed through a cross-examination of Coelho. It appeared that his signature on the agreement was executed in different inks and he admitted that he did not write the wrongly-spelt word 'witnes' on the left lower corner of the agreement. No date was typewritten on the agreement. On being questioned by the court, he frankly admitted that it was not normal to have a land transaction done on the letter head of his legal firm. The agreement on the letter head reads as follows:

"Sale and Purchase of Land held Under E.M. R. 140
Lot 736 Mukim of Linggi, Port Dickson, N.S.

I, Letchumy d/o Arumugam (I/C No. 3059093) acknowledge receipt from Syarikat of No. 13, (1st Floor), Birch Road, Seremban, the sum of $14,100.00 being deposit and part payment of the purchase price of my Land held under E.M.R. 1406 Lot 736 Mukim of Linggi, Port Dickson comprising 5a. 19p.

The balance of the purchase namely $17,900.00 would be paid to me on the said land being registered in favour of Syarikat Revathy their nominee or nominees.

R. T. P.
LETCHUMY D/O ARUMUGAM
(I/C No. 3059093)

We Syarikat Revathy of No. 13, (1st Floor), Birch Road, Seremban, confirm and agree to the above.

WITNESS
Sd:
COELHO
Peguambela & Peguamcara
Kuala Lumpur

SYARIKAT REVATHY
Sd:
N. ANNAMALAY
Managing Director
7-1-77

25/1/77
2/3/77
11/4/77".

It transpired that the agreement (D5) was a duplicate copy of the original (Exhibit P14). Coelho stated categorically that he was certain that the original copy of the agreement would also bear his signature as an attesting witness, but when the original (P14) was shown to him, he was at a total loss as to why it did not bear his signature. He also could not tell whether the agreement (D5) was signed at a later date. He stated that on the day in question, i.e. January 7, 1977, the discharge of charge duly executed by the chargee was handed to him. He then prepared the transfer and the adjudication form at the defendant's office, where the plaintiff signed three documents. Coelho then handed these documents and the issue document of title to the defendant, for whom he acted as solicitor, on the defendant's undertaking to present them for registration, which could not be effected because, Coelho said, there was a caveat entered by the plaintiff. He had not received the balance of the purchase price from the defendant for the credit of the plaintiff's account, and he did not explain the danger of such a course to the plaintiff.

On examination of the transfer purported to be executed by the plaintiff under her thumb impression and under the hand of the defendant (both witnessed by Coelho), I find it crystal clear that the transfer itself was stated to be executed on December 24, 1977, not on January 7, 1977, as alleged by Coelho earlier. The transfer was not stamped and was never presented for registration.

Coelho admitted in his cross-examination that the plaintiff did not suppress the fact of the charge. To contradict himself in no uncertain terms, he in his letter dated June 6, 1978, after he had taken delivery of the discharge of charge and the issue document of title, had, if I may say so euphemistically, the professional courage to write (in reply to the allegation of fraudulent misrepresentation made in the letter dated May 29, 1978 from the plaintiff's solicitors) to the plaintiff's solicitors a letter dated June 6, 1978, (Exhibit P3), in the following terms as the true position:

"Your client with intent to defraud our client collected from him a sum of $6,500.00 for the sale of the said land when she knew or ought to have known that the land in question was charged to Mr. Lai Soo Kee. We are now instructed by our client to give your client notice, which we hereby do, that unless your client produces the title deed within seven (7) days from date hereof free from the charge and execute a memorandum of transfer in favour of our client pursuant to the agreement dated January 7, 1977 our instructions are to apply to the court for specific performance of the contract."

The threat of action for specific performance was never carried out.

On the second day of hearing, the defendant recalled Coelho, who then said he could not recollect what really happened. He said he wrote the date "7.1.77", which was in different ink from that used for his signature. On cross-examination he said he was not the typist and therefore did not have the date typed. He then said that the original (P14) of the agreement (D5) did not contain his signature. He had no choice but to admit that if the transfer was not dated January 7, 1977, it could not have been signed on that date. The transfer bearing his signature as attesting witness was dated December 24, 1977, not January 7, 1977. He had no explanation for the material contradiction in his evidence. It may be noted that the adjudication form for stamp duty purposes alleged to be signed by the plaintiff was also dated December 24, 1977. It is obvious that he was trying his very best to explain away the part he played and the unenviable predicament he was in. He had done so in an unsatisfactory and unbelievable way. It grieves me to say that I am unable to accept the evidence of an advocate and solicitor. Coelho should not have rendered his professional services to his client the defendant in his scheme to acquire the land for his personal benefit regardless of the plaintiff's interest. As an advocate and solicitor he had not maintained, to say the least, his professional independence.

The defendant in his examination-in-chief said he had known the plaintiff for 30 years, and she told him that she was unable to pay Soo Kee and she wanted to sell the land. The relevant documents were signed between 2 and 2.30 p.m. The option (Exhibit D6) was written by one Alvar in Tamil. The plaintiff did not sign the option as she could not write in Tamil. The defendant said she was in a hurry and took the original (P14) of the agreement (D5) away. Coelho had left his rubber stamp in his car and when

he returned with it, the plaintiff had already left. The defendant had told the plaintiff to come and collect her money. The sum of $14,100 was made up of $6,500 in cash and the balance the sale price of the three sub-lots in the land. The plaintiff, he said, demanded the balance of the price three or four days after signing the agreement. There was a private caveat registered against the land. He instructed Coelho to date the transfer on December 24, 1977. But Coelho never said anything to that effect.

Under cross-examination, the defendant said he was a housing developer but had no licence. He had applied for one. He said he was calling as witness one Muniandy but not Kamachi, the daughter of the plaintiff. He admitted that he altered the date in the option from 10.1.76 to 10.1.77. He said the plaintiff came at 1.30 p.m. and signed the documents between 2 and 2.30 p.m. He also said she left at 5 p.m., not knowing that this would clearly contradict his own evidence earlier that she was in a hurry to go home. He did not know if the agreement (D5) was an agreement or not, and he said the three agreements on the sub-lots were prepared on the same day. Three days after signing the agreement, the plaintiff demanded payment and he thought there would be trouble. He was very certain that on January 7, 1977, the issue document of title, transfer and discharge of charge were in the custody of his solicitor. The defendant agreed that from January 1977 the plaintiff had been disputing the land transaction. She had sought legal assistance and also the help of an Indian State Assemblyman. He did not present the transfer as he thought it unsafe to do so since the plaintiff was demanding payment from him. All these clearly impressed me that the defendant had an uneasy mind and guilty feeling after what had transpired on January 7, 1977. He nevertheless gave instructions to his solicitors to demand the document of title from the plaintiff, knowing that it was in his possession. I find that the defendant is not a credible witness.

The evidence of the land broker Subramaniam (DW3) did not assist the defendant in any way. He, like the two previous defence witnesses, said the plaintiff signed all the documents in the presence of Coelho on January 7, 1977. He said the plaintiff's daughter signed the option in his favour on behalf of the plaintiff. He had some interest in connection with the land, at least in the form of brokerage commission. After observing the demeanour of this witness, I have no hesitation to reject his evidence. Although he was in the defendant's office the whole afternoon on the day in question he did not know what had transpired between the plaintiff and the defendant. He would choose to be ignorant when he sensed that what he was going to say was not favourable to the defendant. Subramaniam said that the plaintiff was in the defendant's office from 1.30 p.m. to 5 p.m. His evidence confirms that the defendant, in his attempt to explain why the original copy of the agreement did not have Coelho's signature, was telling a lie in stating that the plaintiff was in a hurry to go home.

The evidence shows that the defendant with the aid of his solicitor Coelho had taken unfair advantage of the ignorance of the plaintiff, an old illiterate Indian woman rubber tapper aged 53. She gave evidence in a straightforward, rustic manner and impressed me as a witness of truth. The defendant had fraudulently misrepresented to her that she had to sign some documents, which were in the English language, for the loan she took from the defendant and in order to get the land freed from the charge. She was induced to sign these documents not knowing that she was in fact signing a sale agreement relating to the land and simultaneously a purchase of three unapproved sub-lots in her very own land. To my mind it is clear from the evidence that, in making the false or fraudulent misrepresentation to the plaintiff, the defendant did not believe in its truth. The three sub-lots were alleged to have cost her a total of $7,600, which she did not receive. It may be noted that in the letter of June 6, 1978 the defendant's solicitors stated that the plaintiff had collected only $6,500, not $14,100. This adds credibility to the plaintiff's story. I may also point out that the preamble to the three agreements stated that the vendor, the firm of the defendant, was the registered owner of the land when in fact it was not. These three agreements must have been prepared by the defendant much earlier than January 7, 1977, probably with the assistance of his solicitor Coelho, as they were all in a cyclostyled form, each with a proposed sub-divisional plan annexed. The plan had not been approved by the appropriate authorities and did not appear to be prepared by a licensed surveyor. The evidence also shows or clearly implies that the defendant was in a position to dominate the will of the plaintiff for an unfair advantage for himself. As a housing developer at the age of 41, he had the advice and services of his own solicitor, while the plaintiff, a village woman, at all material times was never represented by one.

Where a party, especially an ignorant or illiterate one, is unrepresented by an advocate and solicitor in a transaction and the opposite party is represented by one, it is the duty of the advocate and solicitor to explain the terms and conditions of the contract and the legal consequences thereof fully and frankly to the unrepresented party and ensure that this unrepresented party understands the terms and conditions and legal consequences fully, so that neither of the contracting parties has any unfair advantage over the other. Where there is a conflict of interest, as in this case, the advocate and solicitor should advise the plaintiff to be separtely represented. The advocate and solicitor must at all times maintain his professional ethics, honestly, integrity and independence. He should never abuse his special position and the confidence reposed in him if he is not maintain the public respect for and confidence in the legal profession.

I find as a fact that the plaintiff was induced by undue influence on the part of the defendant to sign the agreement of January 7, 1977 and the three agreements for the purchase of the three sub-lots. Section 16(1) of the Contracts Act, 1950 (Revised 1974) defines "undue influence" and section 17 defines "fraud". (See *Lloyds Bank* v. *Bundy*[1] at 765, and *Re Craig (Deceased), Menece*s v. *Middleton*[2] at 393 on undue influence.) He had failed to prove that these agreements were not induced by undue influence under section 16(3) of the Contracts Act. Neither had he discharged his burden of proving the good faith of the transaction under section 111 of the Evidence Act, 1950. The agreement is voidable at the option of the plaintiff and as a necessary consequence must be rescinded.

I now give my answers to the six issues, based on the evidence and my finding of fact:

(1) The document purporting to be a sale and purchase agreement relating to Lot 736 held under E.M.R. 1406, Mukim of Linggi, Port Dickson, was not executed freely and voluntarily by the plaintiff.
(2) Yes.
(3) The agreement must be rescinded.
(4) The plaintiff did not give the option.
(5) No.
(6) No.

I now come to the question of damages which the plaintiff is entitled to receive arising from the defendant's fraudulent misrepresentation (see *Doyle* v. *Olby (Ironmongers) Ltd.*[3] The plaintiff did not plead special damages in her statement of claim. When she gave evidence on special damages, learned counsel for the defendant did not object to or challenge the several relatively small quantified items of special damages arising directly from the felling of the rubber trees by the defendant. The plaintiff also said she was earning some $200 per month tapping the rubber trees on the land; and she stopped tapping after the trees were felled. That was the evidence adduced to prove damages by the plaintiff. The defendant said he felled all the rubber trees on the land at a cost of $1,800. Neither party had produced any valuation report on the land. The defendant, however, said the price of the land was $18,000 per acre before the issue of individual subdivisional titles. I therefore, after making some deduction in respect of the bicycle, award special damages to the plaintiff as follows: $900 for the house, $200 for the rubber mangles, $150 for the bicycle, $110 for the cupboard and table, totalling $1,360. Damage caused to these items of property was stated in her police report without stating the values. As to general damages in respect of the agreement of January 7, 1977, all relevant factors such as the rubber trees were felled and the plaintiff had stopped tapping must be considered. The rubber trees must be old as the yield per month was not high in terms of income. Both learned counsel inadvertently omitted in their written submissions to submit on the guidelines or principles the court should adopt in the assessment of damages. Whatever measure of damages the court applies, I think its duty is to award damages or compensation as fairly and justly as possible as between the parties based on the evidence before it. The plaintiff said that the rubber trees on about half of the land were felled while the defendant said all the rubber trees on the land (about 5½ acres in area) were felled. I find as a fact that about three acres of rubber trees were felled. She had also lost her monthly income of about $200. She would not have suffered these losses if the fraudulent misrepresentation had not been made. These losses must be made good. I assess the approximate value of the rubber trees felled at $2,500 per acre. I therefore think that an award of damages against the defendants in the sum of $10,000 is fair and reasonable in the circumstances of this case, taking into account virtually the damage caused to the rubber trees and the loss of her small income, and bearing in mind that she will retain possession of the land free from encumbrances at its present enhanced value owing to a rise in price in the real property market.

As regards the three agreements relating to the three sub-lots they must also be rescinded. But as the plaintiff received no benefit thereunder, no compensation or refund need be made by her to the defendant under section 37 of the Specific Relief Act, 1950 (Revised 1974). At the same time the defendant is not obliged to pay her damages as she did not prove she had suffered anything thereunder.

The jurisdiction of the court to order specific performance of a contract is discretionary. In the present case since the plaintiff had proved fraudulent misrepresentation, specific performance cannot be enforced in favour of the defendant under the provisions of section 27(b) of the Specific Relief Act. The defendant should not be allowed to benefit from his misrepresentation. The counterclaim is therefore dismissed with costs.

There will be judgment against the defendant in favour of the plaintiff for the sums of $1,360 and $10,000 with costs. Interest on the sum of $1,360 will run from date of filing suit to date of judgment at 4% per annum and thereafter at 8% per annum till realization. Interest at 8% per annum on the sum of $10,000 will run from date of judgment to realization. The plaintiff must refund the sum of $6,500 to the defendant, to be set off against the account of damages payable by him.

I order the rescission of the agreement (D5) and the three agreements (D9, D10 and D12). These four agreements, and issue document of title E.M.R. 1406, and the transfer must be returned to the plaintiff for cancellation within one month from today. I direct the Collector of Land Revenue, District of Port Dickson, to remove the private caveat Volume 6, Folio 61, entered by the defendant on January 24, 1981 under section 417 of the National Land Code.

Order accordingly.

Solicitor: *A.K.J' D'Cruz & Co.; Fernandez & Co.*

YEAP SEOK PEN v. GOVERNMENT OF STATE OF KELANTAN

[F.C. (Suffian L.P., Lee Hun Hoe C.J. Borneo and Abdul Hamid F.J.) June 5 & July 3, 1982]
[Kota Bharu – Federal Court Civil Appeal No. 167 of 1981]

Land Law – Land Acquisition – Declaration that land needed for a public purpose – Land needed for Kelantan Foundation – Whether land required for public purpose – Whether State Government acted mala fide – Kelantan Foundation Enactment, 1974, s. 19(1) – Land Acquisition Act, 1960, s. 8(3)

In this case the Kelantan State Government, the respondent, had published a declaration that the land belonging to the appellant was needed for a public purpose, that is, for the purpose of office and commercial space of the Kelantan foundation. It was contended that the declaration was invalid and ineffective. The learned trial judge dismissed the application of the appellant and he appealed. The